IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

CRL.A.No. 2299 of 2006()

ST.457/2006 ON THE FILE OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS-VII, THIRUVANANTHAPURAM.

APPELLANT: COMPLAINANT

T.SUBRAMANIAN, SUAIB BHAVAN,
T.C.2/1705, GOWREESAPATTOM,
PATTOM P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENT: ACCUSED

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1. P.RADHA, SAFAIWALA,
CARE TAKER OFFICER,
TERMINAL II, INTERNATIONAL AIRPORT, AAI (IAD),
THIRUVANANTHAPURAM-8, RESIDING AT T.C.7/1600,
EEYAMVILAKONAM, KULATHINKARA, PUTHENVEEDU,
THIRUMALA P.O., THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.PUZHAKKARA MUHAMMED FOR R2.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 2299 of 2006

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Dated this the 26th day of June, 2007

JUDGMENT

The appeal is filed by the complainant against the acquittal order passed in S.T.No.457/2006 on the file of the Judicial Magistrate of the First Class-VII, Thiruvananthapuram. The learned counsel for the appellant submits that the non-appearance of the appellant before the court was due to a mistake committed by the Clerk of the counsel in noting the case number. The learned counsel for the appellant also submits that the order under challenge is not in accordance with the principles laid down by this Court in decisions reported in Don Bosco V. Partech Computers Ltd. (2005(2) KLT 1003), G.F.S. Chits & Loans (P) Ltd. V. Rajesh (2006(3) KLT 825) and a decision of the Apex Court reported in Associated Cements Co. Ltd. V. Keshwanand (1998(1) KLT 179 (S.C.).

2. A reading of the impugned order would show that the trial court acquitted the 1st respondent for the reason that when the case was called,

neither the appellant nor his counsel was present. As per the principles laid down in Don Bosco V. Partech Computers Ltd. (Supra), when the presence of the complainant was quite unnecessary and the Magistrate could proceed with the case by adjourning the same even if there was no representation from the counsel, the Magistrate should have adjourned the case, particularly when steps under section 82 and 83 of the Cr.P.C. were pending against the accused. In G.F.S.Chits & Loans (P) Ltd. V. Rajesh (Supra) this Court held that the courts should also bear-in-mind that unmerited, thoughtless disposal gives wrong signal to the society, staking even public confidence in the system of administration of justice. In 1998(1) KLT 179 (Supra) the Apex Court held that personal attendance of the complainant was not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case and when the court notices that complainant was absent on a particular day the court must consider whether personal attendance of the complainant was essential on that day for the progress of the case and also whether the situation do not justify the case being adjourned to another date due to any other reason. A reading of the impugned order would not show that the personal attendance of the appellant is essential on that day.

3. In the above circumstances, this Court is of the view that the order under challenge is liable to be set aside and the matter has to be remitted to the trial court for fresh consideration. Ordered accordingly. The trial court is directed to consider the matter afresh as per law. The court shall issue notice to the 1st respondent, as there is no appearance for him before this Court.

The appeal is allowed as above.

The parties shall appear before the court below on 28th July,2007.

The records of the case shall be forwarded to the trial court forthwith.

K. Thankappan,
Judge.

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K. Thankappan,J.

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Crl.A.2299/2006

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Judgment
26-6-2007